

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Rahman A. Foreman,

Plaintiff,

Court File No. 16-CV-03948

v.

The Honorable John J. Tharp Jr.

Soo Line Railroad d/b/a Canadian
Pacific Railway¹

ORAL ARGUMENT REQUESTED IF
COURT DEEMS NECESSARY

Defendant.

PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS

Comes now Plaintiff, Rahman Foreman, pursuant to Local Rule 56.1, and files this, his Statement of Undisputed Material Facts as follows:

A. MR. FOREMAN'S EMPLOYMENT HISTORY

1. Mr. Foreman, who is an African American, was hired as a conductor trainee by Soo Line's Bensenville division on August 5, 2002. (*See Exhibit 2: Foreman 123-125*).
2. As a train conductor, Foreman was responsible for supervising and ensuring the safe movement of trains. (*See Exhibit 2: Foreman 125-126*).

B. MR. FOREMAN'S HISTORY OF DISCRIMINATION COMPLAINTS

3. Foreman filed an initial complaint based upon race discrimination with the Equal Employment Opportunity Commission (hereafter "EEOC") On May 4, 2011. (*See Plaintiff's Tab AA at pp. 1*).

¹ The proper entity name of Defendant is Soo Line Railroad Company d/b/a Canadian Pacific.

4. Managers were aware of the previous lawsuit filed in 2012 because there was talk of the lawsuit amongst the employees. (*See Exhibit 2: Foreman 336-337*).

C. THE MANAGEMENT OF CP PROPAGATED A DISCRIMINATORY AND RETALIATORY WORK ENVIRONMENT

5. Following the settlement there was a culture amongst upper management where former plaintiffs to the harassment lawsuit were singled out for harsher disciplinary action as opposed to non-plaintiff employees. (*See Exhibit 3: Coleman 24:20-23*).
6. Managers actively followed Foreman around trying to find a reason to discipline him to facilitate the termination of his employment. (*See Exhibit 2: Foreman 168:16-22*). After his original EEOC was filed Defendant instigated various false allegations against Foreman that he was required to sign waivers for so that he could keep his job. (*See Exhibit 2: Foreman 150:16-18; 172:6-21; 194:2-195:5; 203:12-21; 207:5*).

D. SOO LINE'S DISCIPLINARY PROCEDURES

7. Soo Line's 5612-US Discipline Policy was revised June 15, 2013, following the settlement of the lawsuit. (*See Exhibit 3: Coleman 122:15-16*).
8. Steve Cork was Superintendent of Defendant until he voluntarily left the position in September of 2013. (*See Exhibit 12: Cork 10*). The general procedure for when a manager observes a rule violation is 1) to confront the employee about what they have or have not done, 2) both the employee and witness go to the office and create a written statement regarding the incident, and 3) the superintendent weighs the issue of whether to issue hearing or offer waiver. (*See Exhibit 12: Cork 25:6-22*).
9. Following the initial confrontation with the employee, the manager would interview other witnesses in the surrounding area outside the presence of the alleged rule violator. *See (Exhibit 12: Cork 41:5-24)*. Following the interviews, the employee may be dismissed

from service immediately and crew members informed they may be called as witnesses.

Id.

10. Any written statements taken would be saved for potential use at an investigatory hearing.

(*See Exhibit 12:* Cork 27:19-23). Written statement should include date, time, location, temperature, visibility, type of operating method, engineer, conductor, brakeman, and other employees around. *Id.*

11. The manager is also required to inform the superintendent of the alleged violation and the superintendent determines if the incident escalates to notifying the general manager or vice president. (*See Exhibit 12:* Cork 13:4-16). The Discipline Policy determines whether or not an investigative hearing will occur. (*See Exhibit 12:* Cork 14:1-3).

12. It was typical to investigate the alleged rule violation and consult with Human Resources to inquire where the employee stood in the discipline ladder before issuing notice of investigative hearing. (*See Exhibit 12:* Cork 21:10-14).

13. When determining discipline, Defendant may only review an employee's record for infractions occurring within 24 months of compensated service of a previous infraction. (*See Exhibit 4:* Coleman Dep Ex. 4). The underlying principle is that the manager must be able to evaluate the employee's on the job behavior and/or performance during the 24-month time period. *Id.*

E. DEFENDANT'S ALLEGATION THAT FOREMAN COMMITTED VIOLATION OF RULE T-8 IS PRETEXTUAL

14. New trainmasters should be supervised for 4-6 weeks to ensure they are competent of their duties. (*See Exhibit 12:* Cork 61:11-14). Trainmaster training consists of observing a certain number of efficiency tests with another manager. (*See Exhibit 5:* Granfeldt 59:16-17). Feliciano received no training following his promotion. (*See Exhibit 8:* Feliciano

54:19-24). He was never subject to classroom or online training for any efficiency tests or safety rules tests. (*See Exhibit 8:* Feliciano 64:1-16).

15. On May 8, 2014 Feliciano was almost to his fourth week as a trainmaster. (*See Exhibit 8:* Feliciano 54:16-18). Around 10:30 AM Feliciano was driving in a truck and witnessed a train start to move and decided this was a good opportunity to conduct a shove movement test. (*See Exhibit 8:* Feliciano 205:18-23). As the train cars passed him, Feliciano observed Foreman riding a car. (*See Exhibit 8:* Feliciano 206:2-4). Mr. Feliciano decided to speak to Foreman regarding the way he had been riding the tank car. (*See Exhibit 8:* Feliciano 206:24-25).

16. During this time Feliciano was monitoring three different radio frequencies at once. (*See Exhibit 8:* Feliciano 132:1-7). Feliciano was supposed to be monitoring the frequency Foreman was using during the shove test, but changed to a different frequency when he bumped the radio with his knee. (*See Exhibit 8:* Feliciano 132:18-21). Feliciano never failed Foreman for an efficiency test nor entered any test for Foreman into the CAM system. (*See Exhibit 8:* Feliciano 104:17-20; *See Also Exhibit 5:* Granfeldt 181-182).

17. During this time, because Foreman was the conductor the train could not move without his express permission. (*See Exhibit 2:* Foreman 247:2-3).

18. In order to speak to Foreman, Feliciano kept driving alongside the train to intercept Foreman over the crossing. (*See Exhibit 8:* Feliciano 210:13-15). While driving he lost sight Foreman. (*See Exhibit 8:* Feliciano 210:18-21).

19. Foreman approached Feliciano. (*See Exhibit 8:* Feliciano 244:18-20). Feliciano spoke with Foreman because he had a question about a rule or regulation. (*See Exhibit 8:* Feliciano 266:8-9).

20. Feliciano inquired of Foreman how he had gotten to the north side of the train without three-point protection. (*See Exhibit 2:* Foreman 258). Three-point protection means put the reverse in neutral, apply the brakes, and generate field button that shuts down power to train. (*See Exhibit 3:* Coleman 182:2-8). Foreman, not understanding the inquiry, told Feliciano that he crossed the train. (*See Exhibit 6:* Hearing Transcript 17:5-10).

21. If Feliciano had actually believed Foreman crossed the equipment while moving Feliciano was required to immediately removed Foreman from service. (*See Exhibit 5:* Granfeldt 115-116, 178-179).

22. Feliciano did not remove Foreman from service and dismissed following incident. (*See Exhibit 5:* Granfeldt 112:23-24).

F. SOO LINE'S DID NOT INVESTIGATE THE ALLEGATIONS

23. Foreman was not asked by Feliciano or anyone else to give or writeup a statement regarding the alleged rule violation. (*See Defendant's Dittrich-Bigley Dec.* as Tab B).

24. Following his conversation with Foreman, Feliciano never questioned the engineer to verify if train was stopped or moving. (*See Exhibit 8:* Feliciano 136:21-25). Never talked to the Helper on site Bill Lenoir about what he had seen. (*See Exhibit 8:* Feliciano 139:1-2). Never interviewed any other witnesses on the scene regarding what they saw. (*See Exhibit 8:* Feliciano 143:3-5).

25. Feliciano never visited Soo Line's communications person Robert Butts to get a download of Foreman's radio frequency, for the period when he was switched to the wrong channel. (*See Exhibit 8:* Feliciano 161:5-13). Feliciano never download the locomotive engine. (*See Exhibit 8:* Feliciano 169:16-171:1). An engine download records whether a train is moving, how fast it is going, what lights are on, etc. (*See Exhibit 12:* Cork 138:2-5).

26. At no point on May 8, 2014, did Feliciano explain that he hadn't witnessed Foreman cross over moving equipment with his own eyes. (*See Exhibit 8: Feliciano 149:8-10.*)
27. Hearing officer John Granfeldt was assigned and he emailed Feliciano and asked him if he actually saw Foreman cross between a moving train. (*See Exhibit 8: Feliciano 94:25-95:5.*) Feliciano never responded to this email and it was never followed up prior to the hearing. (*See Exhibit 8: Feliciano 159:2-9.*)

G. THE HEARING FOR FOREMAN WAS A SHAM

28. Feliciano was aware that Foreman was involved with a prior lawsuit against Defendant. (*See Exhibit 8: Feliciano 72-73.*)
29. The hearing officer for an investigation under the CBA is a representative of CP. (*See Exhibit 5: Granfeldt 145:16-17.*) The job of a hearing officer is to listen to the evidence presented, listens to the facts presented by both sides, and come to a fair determination. (*See Exhibit 5: Granfeldt 161:23-162:5.*) Hearing officers are required to be fair and impartial in carrying out their duties. (*See Exhibit 5: Granfeldt 147:14-17.*) To be fair and impartial, they must allow all parties to participate and fully explain their version of the facts. (*See Exhibit 5: Granfeldt 151:17-23.*)
30. Facts come into the record from the witness, accused employee, and union rep, not the hearing officer. (*See Exhibit 5: Granfeldt 146:23-147:1.*) However, the hearing officer may summon witnesses not originally listed in the complaint to testify at the hearing by issuing a side letter to the witness. (*See Exhibit 5: Cork 55:18-23; 8-16.*) Foreman's hearing officer Granfeldt did not require any other witnesses than Feliciano. (*See Exhibit 5: Granfeldt 261:19-25.*)
31. The burden of proof at disciplinary hearings is on the carrier. (*See Exhibit 4: Coleman Dep Exhibit. 2 (Labor Agreement) pg. 22.*)

32. Feliciano testified at the Hearing he did not see Foreman move between a moving train.

(*See exhibit 8:* Feliciano 91:7-18; *See also Ex. 6* 21:15-20).

33. Granfeldt immediately validated Feliciano's version as the "correct" version and judged Foreman guilty of violating Rule T-8, before Foreman even had the opportunity to present a single piece of evidence in his defense. (*See Exhibit 5:* Granfeldt 273:21-25; 275:24-276:6).

34. At the hearing, when Foreman testified that he had stopped the train because his Helper (Lenoir) wasn't ready for the shove. (*See Exhibit 5:* Granfeldt 218:17-22; *See Also Exhibit 6:* hearing transcript 27:15-17). It was during this stop that he took the opportunity cross the train. *Id.*

35. Feliciano has not been involved in any investigations since Foreman. (*See Exhibit 8:* Feliciano 28:2-5). In fact, Feliciano was demoted less than two months after the hearing in September 2014 for failure to comply with his trainmaster responsibilities. (*See Exhibit 8:* Feliciano 125:6-21).

36. Hearing Officer Granfeldt argued with the Union representative at the hearing. (*See Exhibit 5:* Granfeldt 214:17-25; 204:2-8; *See also Exhibit 6:* Hearing Transcript: 20:16-22:25; 23:20-24:26; 39:5-43:6).

37. Crystal Reports are created date employee is hired and contains records of training, incidents, and efficiency tests. (*See Exhibit 5:* Granfeldt 245:13-19, *See Also Exhibit 7*).

38. Defendant took into consideration the entire Crystal Report when making its determination to terminate Mr. Foreman. (*See Exhibit 5:* Granfeldt 237:3-11; 243:4-244:13; *See Also Exhibit 7*).

39. Pursuant to the Defendant's own rules and regulations the Defendant could only take into consideration discipline taken against Foreman for the last 24-months. (*See Ex 4:*

Coleman Deposition Exhibit 4). However, the Crystal reports had information on from 2010 and 2012. (*See Exhibit 7, page 6*). The allegation from 2012 and one from 2013 were informal and a positive action plan, both of which are not discipline, therefore, the Discipline record should have only included the May and August 2013 matters. *Id.*

40. The only other person that Defendant was able to identify who had been disciplined for the same violation of Foreman was also an African American male. *See Exhibit 13 Answer to Interrogatory 11.*

Dated: September 14, 2017

By: /S/ Cynthia M Rote
Cynthia M. Rote

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